

In the High Court of Punjab and Haryana at Chandigarh

FAO 3298 of 2002 (O&M)
Date of decision: -12-2006

Surya Uday

.....Appellant

Versus

Suresh and others

.....Respondents

CORAM: Hon'ble Mr.Justice Vinod K.Sharma.

Present: Mr.A.P.S.Deol, Advocate, for the appellant.
Mr. Kanwaljit Singh, Advocate, for respondent No.1.
Ms.Vandana Malhotra, Advocate, for respondent
No.3.

VINOD K.SHARMA,J.

CM No. 12566-CII of 2002 in
FAO No. 3298 of 2002

The applicant-appellant alongwith the appeal filed by him had moved this application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure to produce documentary evidence.

The notice of this application was given to the respondents on 27th September of 2002 by this Court. However, no reply has been filed to the said application.

By way of present application, the applicant-appellant has sought to lead additional evidence by placing on record the Discharge

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Card (Annexure A-1) issued by the Satluj Hospital showing that it was a case of road side accident with head injury quadriparesis. In addition thereto, the applicant has sought to placed on record the Discharge Summary issued by the Indian Spinal Injuries Centre, Vasant Kunj, New Delhi, as Annexure A-2 and a Salary Certificate issued by PUNWIRE Telecom as Annexure A-3. It was claimed in the application that this documentary evidence was necessary for proper adjudication of the case. As no reply has been filed to this application, it is accordingly allowed and documents annexed with the application as Annexures A-1 to A-3 are taken on record.

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The present appeal has been filed against the award dated 4-04-2002 passed by the learned Motor Accident Claims Tribunal, Jalandhar (for short the 'Tribunal') dismissing the claim petition filed by the claimant-appellant under Section 166 of the Motor Vehicles Act, 1988 (for short the 'Act') seeking compensation to the tune of Rs. 25 lacs on account of the injuries sustained by him in motor vehicle accident on 17-6-1997.

In the claim petition it was disclosed that on 17th of June, 1997, the claimant-appellant was coming back to home on motor-cycle bearing No. PB-08-R-5547 while on the pillion of which Kulwinder Singh was sitting and when they leached near Guro Gobind Singh Stadium, a car make Maruti No. PB-08-P-5480 driven by respondent No.1 rashly and negligently and at a high speed came

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from the behind and hit against the motor-cycle. As a result of the accident, the appellant along with pillion rider had fallen. The appellant fell in front of the car as a result of which it had stopped. The appellant was pulled out from beneath of the car. Col. M.S. Bal, Kamaljit Singh and other persons gathered at the spot and during this confusion, respondent No.1 fled away with his car. The claimant appellant was removed to Tagaore Hospital, Jalandhar from where he was taken to Satluj Hospital, Ludhiana. Later on, the applicant received his treatment from Indian Spinal Injuries Centre, New Delhi.

It was claimed by the appellant that he was earlier employed with PUNWIRE and was drawing a salary of Rs. 2500/- per month as a trainee, but he had left the job to complete his graduation and also complete one year diploma course in Computer Science. It was further that he was expected to get a job on the salary of Rs. 5500/- per month. FIR regarding this accident was lodged with Police Station Division No.6, Jalandhar and respondent No.2 being owner of the Maruti Car No. PB-08-P-5480 was impleaded as a party. The car was insured with Oriental Insurance Company Limited.

The claim was contested by respondent No.1 who denied his involvement in the alleged accident. It was claimed that no accident had taken place as alleged by the appellant. It was further claimed that though the accident was alleged to have taken place on 17th of June 1997, the FIR was lodged on 19th of July 1997 vide DDR No.22, whereas the present claim petition was filed on 16th of April

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1998. It was further claimed by respondent No.1 that he had no concern with the Maruti Car. It was claimed that he had no concern with respondent No.2. The case set up by respondent No.1 was that he was employed as a sales-man with M/S Baweja & Co. in 1990 and remained in their service upto 4-4-1997 when he left the service. It was further the case of respondent No.1 that he was not employed as a driver of the vehicle allegedly involved in the accident. He also claimed that he was unnecessarily dragged in the litigation. According to him, his name did not find mention in the FIR and he was not accused in the case. The quantum of compensation claimed by the appellant was also questioned.

Respondent No.2 i.e. owner of the Maruti Car denied the averments made in the claim petition for want of knowledge with regard to the accident and other particulars of the claim petition. It was claimed that vehicle owned by him was not involved in any accident. However, it was admitted that the car was insured with Oriental Insurance Company Ltd. G.T. Road, Jalandhar. He denied his liability to pay the compensation.

The Insurance Company, respondent No.3, herein denied the averments made in the claim petition for want of knowledge. However, it was admitted that the car was insured with it. The compensation as claimed was also denied. It was claimed that the driver of the vehicle did not hold valid driving licence at the time of accident and that the claim petition was bad for mis-joinder of the

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necessary party.

On the pleadings of the parties, following issues were framed:-

- “1. Whether Surya Uday alias Micky claimant received injuries in motor vehicle accident because of rash and negligent driving of Maruti Car No.PB-08-P-5480 by respondent No.1 on 17.6.1997 in the area of Guru Gobind Singh Stadium, Jalandhar. OPP petitioner.
2. Whether the claimant is entitled to compensation, if so, to what extent and from which of the respondents. ? OPP petitioner.
3. Whether respondent No.1 did not hold valid driving licence at the time of accident and even otherwise contravened the terms of the insurance policy and the insurance company respondent No.3 is not liable for any compensation ? OP respondent No.3.
4. Whether the petition is bad for non-joining of owner and insurance company of the motor cycle ?
OPR
5. Relief.”

On issue No.3 it was held by the learned Tribunal that respondent No.1 had a valid driving licence at the time of the accident,

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whereas issue No.4 was also decided in favour of the appellant. However, on issues Nos.1 and 2 which were taken up together, the learned Tribunal came to the conclusion that no accident had occurred due to rash and negligent driving of Maruti car No.PB-08-P-5480 by respondent No.1 on 17-6-1997 in the area a of Guru Gobind Singh Stadium, Jalandhar. Consequently issue No.2 was also decided against the appellant by holding that he was not entitled to any compensation.

The learned Tribunal came to the conclusion that merely because Suresh Kumar had a driving licenece issued for driving the car and he was employed by respondent No.2, no presumption could be drawn that he was driving the car make Maruti at the time of the accident on 17-6-1997. The learned Tribunal also came to the conclusion that as the FIR regarding the accident was lodged after 41 days, it casts a serious doubt about the genuineness of the version of the accident in view of the fact that Col. M.S.Bal and Kamaljit Singh, who witnessed the accident, had not been examined.

The learned Tribunal also held that the presence of AW-3 Kulwinderjit Singh at the time of the accident was proved as he had not got any first aid from Tagore Hospital, Jalndhar. Learned Tribunal disbelieved the story on the ground that when 15-20 persons had gathered at the spot, it was not possible for the driver of the car to run away from the spot. The Tribunal also noticed that no proof of repair of the motor- cycle was produced. Therefore, his evidence could not be believed. The Tribunal further took notice of the fact that as the

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Police has challaned Paramjit Singh as an accused, therefore, it was not established that the accident had taken place as alleged. The Tribunal also took notice of the fact that the documents placed on record did not show that the injuries sustained by the appellant were outcome of the motor vehicle accident.

Mr. A. P. S. Deol, learned counsel appearing for the appellant, has challenged the findings of the learned Tribunal on issue No.1 by placing reliance on the statement made by Kulwinderjit Singh, AW-3, who was an eye witness of the accident. The contention of the learned counsel for the appellant was that the said witness had given the details of the accident and, therefore, there was no reason to disbelieve the testimony of this witness. He further made a special reference to the suggestion made in the cross-examination to the effect that he did not know at what speed the Maruti car was coming. He volunteered that it was coming at a very high speed and he did not hear the scratching noise made by the car coming from the back side. Another suggestion was put to him, in reply to which, he stated that he did now know the damage caused to the car. This witness stated in the cross-examination that he had taken first aid from the Tagore Hospital, Jalandhar. Thus, according to the learned counsel for the appellant, the testimony of this witness was sufficient to connect the respondents with the alleged accident.

The learned counsel for the appellant also made a reference to the evidence of Ramesh Mahajan, PW-5, father of the

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claimant to the effect that he had immediately reached the Hospital on receipt of a telephonic call about the accident. Besides this, even the claimant was examined by the commission due to his medical health where he submitted the version as disclosed in the claim petition.

It may further be noticed that Suresh Kumar had appeared as RW-1. Though in the written statement he denied his association with respondent No.1, but it was proved on record that he was employed with M/s Baweja & Co. which was a proprietary concern of respondent No.2, who was the owner of the vehicle in question. There is nothing on record to show as to why the claimant would falsely implicate him in the present case. If any doubt was left, that gets clarified from the evidence brought on record by way of additional evidence. Annexure A-1 is a Discharge Card from the Satluj Hospital which clearly shows that it was a case of road side accident. The treatment further shows that the claimant had suffered cent-percent disability. The injuries suffered by the appellant are as under:-

“INVESTIGATIONS AND REPORTS

C-11.7	BL.UREA-34	<u>Urine</u> (11.8)	<u>MRI</u> Burst fracture & Post Sabluxation C5 on C6 with fracture (Burst) C4 with contusion from C4-C6.
C-21, 300	B.T. -2'-30”	Alb Nil	
34.7	CT 6-30”	Suc nil	
R-40 mm	HvsAG (-) ve	P.C.1-2/HPF	
		<u>Urin culture (13.3)</u>	
87, 40 M3,	Ec	S. Bal-0.6 mg.	Sterile

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for MP (-) ve D-02
SUPT-25 EVI- WNL
SUPT.-14

TREATMENT GIVEN

Open Reduction for Dislocation C5, C6 and bone graft fixation was done 4A on 4.7.97 By Dr. Chahal – Supporting Medical Treatment.

- Physiotherapy (4) OCC Theorapy (5) Bowel and Bladder mx.

ADVICE O N DISCHARGE

- Tab Hippmey 1 bd 1 – 1
- Tab Unicostin 1 bd 1 – 1
- Cap Becasuls 1 md. ”

The medical certificate Exhibit P-1 issued by Indian Spinal Injuries Centre, reads as under:-

“This is to certify that Mr. Micky Mahajan aged 23, resident of 152, Lajpat Nagar, Jalandhar, a case of fracture Dislocation C5, C6 with Tetraplegia was treated under my care from 30th of June 1997 to 15th of August 1997. His disability was 100% and is recommended one (1) Sick attendant to take care of him.”

In the light of the foregoing documentary evidence, I find force in the contention raised by the learned counsel for the appellant and accordingly the findings recorded on issue No.1 are reversed and it is held that the appellant sustained injuries in motor vehicle accident due to rash and negligent driving of Maruti Car No. PB-08-P-5480 by

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respondent No.1 on 17-6-1997 in the area of Guru Gobind Singh Stadium, Jalandhar. In view of the findings on issue No.1, the finding recorded on issue No.2 by the learned Tribunal is also reversed and it is held that the appellant would be entitled to the compensation for the injuries suffered by him in the motor vehicle accident.

It is not in dispute that the appellant suffered cent percent disability which was permanent in nature and, therefore, he was not capable of doing anything in life. He further needs a permanent attendant to take care of him. By way of Annexure A-3, it has been brought on record that the appellant was getting a sum of Rs. 2500/- as a trainee and he had further taken admission for getting one year diploma in Computer Science. He had a good potential of earning at least Rs. 5500/- per month as claimed by him. However, for the purpose of grant of compensation, we take his income at Rs. 2500/- per month which he had actually drawn. The claimant was aged about 23 years at the time of the accident. Thus, the multiplier of 16 would be just and fair. Accordingly, it is held that the appellant is entitled to Rs. 4,80,000/- towards compensation for the injuries suffered by the claimant-appellant. In addition thereto, the appellant would be entitled to another sum of Rs. 1,85,735/- towards medical expenses incurred by him for his treatment, the bills regarding which were produced on record. Accordingly, on issue No.2, it is held that the claimant-appellant is entitled to a total sum of Rs. 6,65,735/-

In view of the findings recorded above, this appeal is

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allowed. The claimant-appellant is held entitled to the payment of Rs. 6,65,735/- along with interest @ 7.5% per annum from the date of award till realisation. The liability to pay compensation shall be joint and several.

**December ,2006
'dls'**

**(VINOD K.SHARMA)
JUDGE**

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